IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6896 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISHCHANDRA PUKHRAJ CHAUHAN

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 6896 of 2001

MR TR MISHRA for Petitioner No. 1

MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/2001

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution, the petitioner has challenged the order dated 17-7-2001 passed by the respondent - Board discharging the petitioner from service on the ground that he had produced school leaving certificate wherein interpolations were made in the caste column so as to show the petitioner as a scheduled tribe candidate, although the petitioner was a scheduled caste candidate.

2. In view of the course which this Court proposes to adopt, it is not necessary to set out all the facts in detail, suffice it to state that the petitioner was appointed as a Helper under the GEB by order dated 18-5-1994. The petitioner was appointed as a scheduled tribe candidate in view of the reservation provided for scheduled tribes. By order dated 9-4-2001 (Annexure A), the petitioner was placed under suspension on the ground that in the school leaving certificate, the petitioner's caste was mentioned as "Hindu Bhangi" which the petitioner changed by interpolation to "Hindu Bhangora" and on that basis, the petitioner got certificate from the Social Welfare Department as a scheduled tribe candidate and on that basis got appointment as a Helper under the GEB in the quota for scheduled tribe candidates. It was further mentioned in the suspension order that as the aforesaid cheating made by the petitioner was brought to the notice of the Board, the petitioner was placed under suspension pending inquiry as the petitioner was liable to be dismissed from service. Thereafter, the petitioner was served with a show cause notice dated 25-4-2001 (Annexure B) in respect of the aforesaid allegation and the Board invoked the provisions of General Standing Order No.7 dated 4-10-1960 particularly clause 16 thereof, which provides as under:-

> 16. Any candidate who is found to have knowingly furnished any particulars which are false or to have suppressed material information of a character which known, would ordinarily have debarred him from obtaining employment in the Service of the Board, is liable to be disqualified and if appointed, to be removed from service.

By the aforesaid notice, the petitioner was called upon to show cause why the petitioner should not be dismissed from service and the salary, allowances and other benefits given to the petitioner should not be recovered. The petitioner was required to give reply within 10 days. It appears that after the aforesaid notice was served upon the petitioner, the petitioner made representations for payment of subsistence allowance and arrears of

subsistence allowance. The petitioner also made representation dated 22-6-2001 (Annexure G) requesting the authority for extension of time limit for filing reply to the show cause notice dated 24-5-2001 which was received by the petitioner on 14-6-2001. Hence the petitioner prayed for extension of time till 23-7-2001. In response thereto, the Executive Engineer (DR), Dhansura sent communication dated 11-7-2001 (Annexure H) extending the time limit for filing the reply to the show cause notice by 10 days. The respondent - authority passed the order dated 17-7-2001 terminating the petitioner's services on the ground that the allegation made against the petitioner was proved and that the petitioner had chosen not to file his reply. It is the petitioner's case that he had submitted the reply to the authority on 18-7-2001 and the same was received by Mr BK Patel, Deputy Engineer on 18-7-2001 within the extended time limit of 10 days from 11-7-2001. It is the petitioner's grievance in this petition that the respondent did not consider the said reply because the respondent proceeded to pass the impugned order dated 17-7-2001 without waiting for the petitioner's reply within the extended time limit upto 21-7-2001. Hence the impugned order has been challenged on the ground of violation of principles of natural justice. Mr Mishra has vehemently submitted that the impugned order deserves to be quashed and set aside and the petitioner is required to be reinstated with full backwages.

3. On the other hand, Mr BT Rao learned counsel for the respondent - Board has opposed the petition and submitted that when the petitioner had tampered with the school leaving certificate and obtained caste certificate from the Social Welfare Department on that basis and in turn used the same for getting appointment in the quota reserved for scheduled tribe candidates, the impugned order was fully justified. It is further submitted that when extension of 10 days was given by order dated 11-7-2001 what was meant was that extension of 10 days was given with effect from 3-7-2001 which was the date on which the Executive Engineer had received the letter from the Circle office.

4. Having heard the learned counsel for the parties, it appears to the Court that when the petitioner was granted extension of 10 days to file reply and the said extension was communicated to the petitioner vide letter dated 11-7-2001, the respondent - authority was bound to give time to the petitioner upto 21-7-2001 for filing reply to the show cause notice. In the facts and circumstances of the present case, the date of receipt of

petitioner's representation for extension of time cannot be considered to be the starting point for calculating the period of extension. It is, therefore, clear that the impugned order dated 17-7-2001 was passed by the authority without taking into consideration the reply filed by the petitioner.

5. It is also required to be noted that the respondent has not passed a mere order of termination simpliciter but the impugned order dated 17-7-2001 clearly states that the petitioner had committed an act of cheating by making alteration in the school leaving certificate. The impugned order is, therefore, a penal order passed against the petitioner on the basis of misconduct alleged against the petitioner. The impugned order will, therefore, have to be set aside. But respondent - Board will be at liberty to pass fresh orders in accordance with law.

6. Even after setting aside the order of dismissal, the question arises as to what is to happen to the intervening period from 17-7-2001 till today. Mr Mishra's submission is that since dismissal order is set aside on the ground of violation of principles of natural justice, the petitioner is entitled to full backwages.

7. However, the above prayer cannot be granted. Now the view being taken is that when the order of dismissal is found to be illegal and the order is therefore set aside, whether the employee should be paid backwages or the arrears of difference of salary, should be decided at the conclusion of the inquiry to be started or restarted after quashing and setting aside the initial order of dismissal and the outcome of the final inquiry should decide as to whether the employee should be paid backwages or arrears of difference of salary for the intervening period. Moreover, when the employee was under suspension immediately prior to the date of dismissal / termination, when the order of dismissal/termination is set aside, the suspension of the employee would revive and the employee will be treated as under suspension during the pendency of the inquiry.

8. In view of the above discussion, the petition is partly allowed. The impugned order dated 17-7-2001 at Annexure I to the petition is quashed and set aside as violative of principles of natural justice. The respondent shall take the petitioner back in service and treat him as under suspension and take the petitioner's reply dated 18-7-2001 into consideration and any further reply which the petitioner may submit to the respondent

within two weeks from today and shall be at liberty to proceed further in accordance with law.

It is clarified that this Court has not expressed any opinion on the merits of the charge levelled against the petitioner. It goes with saying that the petitioner shall cooperate with the respondent for expeditious disposal of the inquiry within 3 months from today.

9. Rule is made absolute to the aforesaid extent only with no order as to costs. Direct service is permitted.

(M.S. Shah,J)

zgs/-